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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	)	
	)	
Rules Governing Programming Practices of Broadcast Television Networks and Affiliates	)	MM Docket No. 95-92
	)	

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COMMENTS OF HOLSTON VALLEY BROADCASTING CORPORATION

Holston Valley Broadcasting Corporation (Holston) hereby presents its Comments in the above-captioned Docket. Holston is the licensee of UHF television station WKPT-TV and of UHF Low Power Television (LPTV) station WAPK-LP, both licensed to serve the community of Kingsport, Tennessee, and the Tri-City (Bristol-Kingsport-Johnson City), TN/VA television market, which is ranked by the A.C. Nielsen Company as the nation's 93rd largest market.

WKPT-TV is affiliated with the ABC Television Network while WAPK-LP is a United Paramount Network (UPN) affiliate. Additionally the market is served by two full-service VHF stations affiliated with CBS and NBC, licensed to Johnson City and to Bristol respectively. Two additional UHF full-service stations are also technically located within the market, although both are licensed to communities lying near the edge of the local Dominant Market Area (DMA). One of these, licensed to Greeneville, TN, is a Fox affiliate while the other, licensed to Grundy, VA, is an independent station carrying primarily religious programming.

Holston urges the Commission not to be precipitous in its proposed elimination or modification of rules governing the relationships between networks and their affiliates.

The Right to Reject and Time Option Rules

Individual local stations, not their networks, are licensed by the Commission to broadcast in the public interest, convenience, and necessity. Nothing is more fundamental than the individual licensee's ability to reject any program from any source. The local station licensee must be able to reject any program offered by its network. If the station rejects too many programs, then the network may see fit to seek another affiliate in the subject market or to rely on signals from adjacent markets or signals imported by cable or satellite to reach the subject market. Affiliation with a major network is almost universally considered a great asset to a local station; hence, in the interest of maintaining a positive relationship with its network, in practice a local affiliate is not going to precipitously reject that network's programming.

Holston's WKPT-TV was one of some forty stations (including some in much larger markets), which rejected ABC's controversial series, NYPD Blue, during its first season on the network. This rejection was content-based. The decision to reject NYPD Blue resulted from the sexually-explicit scenes contained in the episodes Holston had pre-screened before the season began. Such content continued to be apparent throughout several weeks of this first season. Interestingly, the content of the series became much less sexually-explicit late in season one and during year two --- and practically every ABC affiliate carried the series in year two. The ability to reject programs backed up by real pre-emptions sent an important message to the network.

Further, the Commission's proposal to eliminate the right to reject "based solely on financial considerations" is ill-founded and will lead to a morass in which conflicting arguments as to why a given program was rejected will most certainly arise. For example, network affiliates frequently preempt network programming to carry Billy Graham religious specials. While the station may derive significantly greater income from the Billy Graham crusade special than from the offering of its primary network, the popularity and ratings of such occasional non-network "specials" are very significant in some markets.

It is widely accepted that stations which make a reasonable profit are more likely to devote greater resources to local news and public affairs programming. The occasional decision to preempt a low-rated network offering in favor of another program, which produces substantially greater revenue, may be the act which provides the dollars to pay for additional local news personnel or for the equipment required to better cover local news. Is this not in the public interest?

For the same reasons already cited, networks must not be allowed to "option" time. Such options would severely limit the local affiliate's ability to develop new local programs and the ability of independent program producers and syndicators to market new programs, thus stifling their incentive to develop new and potentially-popular programming.

The Exclusive Affiliation Rule

While the primary affiliate of any given network should always be given the first option to carry a given program or program series of that network, an exclusive affiliation, which absolutely prohibits an affiliate of one network from carrying a program from another network ---- once the other network's local affiliate has rejected the program or program series ---- is contrary to the public interest, for it effectively denies the local audience the opportunity to view that program or series even when a local station may desire to broadcast the program.

The public interest is served when a network program rejected by the primary affiliate of a network in a given market is offered to other stations in the market, whose geographic coverage lies within that same market. For example, Holston's LPTV station WAPK-LP (then known as W30AP), the local UPN affiliate, has carried NBC programs rejected by NBC's local primary affiliate.

(WAPK-LP has also offered to carry a number of ABC programs not cleared by ABC's local affiliate, WKPT-TV, although we note with chagrin that ABC has steadfastly refused to allow an LPTV station to carry any of its programming, even though in addition to its direct off-air viewership WAPK-LP reaches most homes in the local metro area via cable. It is our belief that when a full service station cannot be secured to carry a network program, the network should offer that program to an LPTV station.)

As the Commission notes there is interplay between this rule and the Right to Reject rule. The fact that a program might appear on another station if it is not cleared by the primary affiliate certainly plays a part in the primary affiliate's decision-making process.

<u>The Dual Network Rule</u>

This rule should be left in place for the time-being; however, the Commission may find it appropriate to re-visit this issue once advanced digital television becomes a fact of life. For example, one can easily foresee the possible development of news-only "second" networks by ABC, CBS, and NBC. Such second networks could logically be transmitted on a Standard Definition Television (SDTV) channel within the local affiliate's (hopefully) surviving six megaHertz of spectrum at the same time the same network owner's "first" network is presenting traditional entertainment programming fare in either High Definition or Standard Definition within that same six megaHertz channel.

Obviously, should the Commission ultimately relax this rule, care should be taken not to allow the acquisition of one long-established network by another long-established network.

<u>The Network Territorial Exclusivity Rule</u>

In considering all issues of territorial exclusivity a combination of factors must be considered in order to protect the legitimate interests of networks, their affiliates, and the viewing public.

First, in a so-called hyphenated market in which different stations are licensed to different communities, but <u>where those stations and their communities of license are clustered more-or-less at the center of the market and serve substantially the same</u>

coverage areas, the pertinent communities of license should be considered "one in the same" for purposes of the Commission's rules.

On the other hand, in cases where a station is technically considered to be located in a given market, because the county in which its community of license is located is within that market's DMA, but where the subject station's coverage lies largely in an adjacent market and very significantly overlaps the coverage of an adjacent market primary affiliate of a network, that network may have very legitimate competitive reasons not to offer an uncleared program or program series to the "edge of the market" station, whose coverage substantially duplicates that of that network's primary affiliate in the adjacent market.

Another somewhat unusual situation applies in markets in which for various reasons usually related to coverage and terrain, there are two affiliates of one network. For example, there are situations in which the DMA has been defined by one or more powerful VHF stations, but where there are two often UHF affiliates of one of the networks, each primarily serving one portion of the DMA. In changing its rules governing network/affiliate relationships the Commission must take care to avoid allowing expanded degrees of territorial exclusivity based upon the DMA or upon unrealistic theoretical coverage, which could effectively deprive one small station of its affiliation thus leading to the demise of the smaller station and the valuable local public service it provides.

A similar situation applies where often because of coverage anomalies or unusual historical market development, a small one or two station market exists on the periphery of or "in the shadow of" a much larger market. The station(s) in the smaller market likely could not exist without a network affiliation. The Commission should take care not to change its rules in such a way that the network under pressure from its larger market affiliate could "shut out" the smaller market station's affiliation thus effectively stifling the smaller station and bringing to an end the valuable local public services it provides.

Respectfully submitted,

HOLSTON VALLEY BROADCASTING CORPORATION

By: George E. DeVault, Jr.

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President

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